GREGORY SEOW & ANOR v. KKHILLS MANAGEMENT SDN BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
TEE GEOK HOCK J
[ORIGINATING SUMMONS NO: BA-24NCvC-436-03-2023]
12 DECEMBER 2023

Abstract – *A burden of obligation under an agreement cannot be validly assigned to a non-party. However, there is a particular type and nature of contractual burden or obligation which could be validly assigned, together with the rights and benefits under the same contract, to a non-party who becomes the assignee, ie, (i) the benefit and burden must be conferred in or by the same transaction; (ii) the receipt or enjoyment of the benefit must be relevant to the imposition of the burden in the sense that the former must be conditional upon or reciprocal to the latter; and (iii) the person on whom the burden was alleged to have been imposed must have or have had the opportunity of rejecting or disclaiming the benefit, not merely the right to receive the benefit.*

CONTRACT: *Assignment – Burden of obligation – Principle of conditional benefit – Guarded and gated community – Owners of residential home in guarded and gated community refused to pay maintenance charges and sinking fund – Whether burden of obligation under agreement could be validly assigned to non-party – Whether benefit and burden conferred in or by same transaction – Whether receipt or enjoyment of benefit relevant to imposition of burden – Whether person on whom burden was alleged to have been imposed must have or have had opportunity of rejecting or disclaiming benefit*

Hicom-Gamuda Development Sdn Bhd ('developer') had developed a housing development ('KK Hills') and had entered into sale and purchase agreements and deed of mutual covenants ('DMC') with the purchasers of KK Hills, including the plaintiffs. Vacant possession was delivered in 2005 and the plaintiffs moved in in 2008. KK Hills was managed by the developer through its agents. In 2011, the Residents' Association of Kota Kemuning Hills ('RA') was established and the RA liaised with the developer on the management of KK Hills on behalf of the owners. The first plaintiff had joined as a committee member of the RA for the term 2018/2019. In 2020, the developer and the RA gave notice of the assignment to the residents of KK Hills, *ie*, the handover of the management of KK Hills to the RA. The developer entered into a master assignment with the RA to assign its rights, duties and obligations under the DMC ('first assignment'). Since the first assignment, the RA managed KK Hills until the management company took over the management. In 2022, the local authority granted specific detailed approval for the guarded community at KK Hills. A notice of the 11th annual general meeting ('AGM') of the RA was issued to the members of the RA.

Shortly before the date of the AGM, the first plaintiff was temporarily suspended as a member by the RA, pending an inquiry into an alleged misconduct. As a result of the suspension, the first plaintiff was barred from attending the 11th AGM. During the AGM, which was attended by 39 members, the RA by majority of 36 votes, passed the following resolutions: (i) to assign the roles and responsibilities under the DMC from the RA to the management company; and (ii) to transfer and release shares of the RA to five individuals. The RA subsequently executed a second assignment document by which the RA assigned the rights, duties and obligations under the DMC to KKHills Management Sdn Bhd, the first defendant ('management company') ('second assignment'). The management company then proceeded to manage KK Hills and collected maintenance charges and sinking fund based on the purported assignments. The management company also operated the gated and guarded community at KK Hills. The RA, after an inquiry, found that the first plaintiff's conduct was unbecoming and had fallen short of the standard expected of a member of the association but merely punished him with an admonition and a reprimand. The first plaintiff's membership was lifted. The plaintiffs, however, refused to pay maintenance charges and sinking fund since December 2020. The plaintiffs commenced the present suit against the defendants, (i) challenging the validity of the first assignment of its roles and functions under the DMC; (ii) challenging the validity of the RA's resolutions and the assignment of its roles and functions under the DMC to the management company; (iii) declaratory orders against the office-bearers of the RA regarding trust, accounts and restitution; (iv) the appointment of receiver and manager to operate and manage the guarded and gated facilities on behalf of the residents and homeowners in the development project; and (v) other ancillary and/or consequential orders.

Held (allowing prayers in part):

(1) As a general rule, a burden of obligation under an agreement cannot be validly assigned to a non-party but, as an exception, there is a particular type and nature of contractual burden or obligation which could be validly assigned together with the rights and benefits under the same contract to a non-party who becomes the assignee. The case of *Davies v. Jones* held that the following propositions could be distilled from the cases that were analysed: (i) the benefit and burden must be conferred in or by the same transaction; (ii) the receipt or enjoyment of the benefit must be relevant to the imposition of the burden in the sense that the former must be condition on or reciprocal to the latter; and (iii) the person on whom the burden was alleged to have been imposed must have or have had the opportunity of rejecting or disclaiming the benefit, not merely the right to receive the benefit ('*Davies* tripartite formulation'). The exception, also described as the conditional benefit principle, had been recognised in Malaysia. (paras 35, 38 & 39)

(2) The transaction between the developer and the plaintiffs was the sale and purchase of a residential house to be built by the developer, together with facilities, services and common areas, including security guards. The SPA and the DMC were signed together on the same day when the developer and the plaintiffs entered into the sale and purchase transaction. Under the DMC, the burden of providing security guards was to be handled and managed by the developer and the benefit of having security guards and therefore, enhanced security in the development, was the intended direct benefit to be enjoyed by the purchasers as residents in the development. The indirect monetary benefit of a probably better market value of residential house in a guarded community, was also enjoyed by all the purchasers of the residential units. The property purchasers' benefits, derived from the provision of security guards, were relevant to the imposition of the developer's burden in the sense that the former were conditional upon or reciprocal to the latter's developer's burden. Further, when the properties in the development project were sold by the developer to the purchasers, including the plaintiffs and with the signing of the DMC simultaneously with the SPA, each purchaser knew at the time of such signing that the development was to be a guarded community and they signed the agreements with the intention and/or reciprocal commitments that they would contribute towards the costs of security guards. If a buyer did not want the financial burden of contributing towards the costs of security guards in a guarded community, he/she should not have bought any unit of property from the developer with such guarded community features and terms. The requirements of the *Davies* tripartite formulation had been fulfilled. (paras 44-47, 49, 50, 53, 54, 56 & 57)

(3) In the express terms of the DMC, the purchasers including the plaintiffs, specifically agreed that the developer's handling and management of the security service would not be forever and that the developer had been given express contractual rights, after the completion of the construction and development of the project, to assign its roles and functions under the DMC to the RA or corporation. By way of the master agreement, the developer assigned its roles and functions to the RA comprising members who were purchasers of the property units in the project. The master assignment from the developer to the RA was valid and binding upon all the purchasers in the development project, including the plaintiffs. (paras 58-60 & 65)

(4) The management company was not a legal entity which was intended or contemplated by the developer and the purchasers, who were signatories to the SPAs and DMCs, as a legal entity who was competent and eligible

to take over the roles and functions of the developer under the DMC. In the circumstances, the second assignment, said to be signed between the RA and the management company, was a transaction which was not permitted by the DMC. The management company, with its shareholding structure and directorship, could not lawfully take over the roles and functions of the RA. At the material time of the second assignment, the management company was not a competent or eligible legal entity to receive the assignment of the roles and functions from the RA under the DMCs. As such, the assignment under the second assignment was invalid and void. The items of resolutions passed in the AGM of the RA insofar as they purported to assign or pass the RA's roles and functions under the DMC to the management company, were null and void and of no effect. (paras 75, 76, 79 & 95)

(5) The following declarations were made: (i) the challenge against the RA's resolutions of the OS was partly allowed. Resolutions Nos. 2 and 3 passed in the AGM, insofar as they related to the purported assignment of the RA's roles and functions and transfer of shares to the management company, were null and void and of no effect; (ii) the second assignment was null and void and of no effect; (iii) the management company held all and any of its assets on trust for the RA; (iv) the management company was to account for all assets and proceeds, as trustee to the RA, by preparing a statement of account of assets and proceeds and providing the same to the RA; and (iv) the members of the RA were, subject to payment of administrative charges and subject to their fulfilment of payment obligations in accordance with the rules of the RA, entitled to receive a copy each of the statement of account above from the RA. All the other reliefs prayed for by the plaintiffs were dismissed. (paras 99 & 100)

Case(s) referred to:

Affin-ACF Finance Bhd v. Meriplex Sdn Bhd & Ors [2011] 8 CLJ 455 HC ***(refd)***

Chung Khiaw Bank Ltd v. Penang Garden Sdn Bhd [1990] 2 CLJ 621; [1990] 1 CLJ (Rep) 748 HC ***(refd)***

Davies v. Jones [2009] EWCA Civ 1164 ***(refd)***

Elwood v. Goodman [2014] Ch 442 ***(refd)***

Halsall v. Brizell [1957] 1 All ER 371 ***(refd)***

Housing And Development Board v. Lee Sem Yoong Sdn Bhd [1987] CLJU 30; [1987] 1 LNS 30 SC ***(refd)***

Lee Tak Suan v. Tunku Dato' Seri Shahabudin Tunku Besar Burhanuddin & Ors [2012] CLJU 598; [2012] 1 LNS 598 HC ***(refd)***

Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd & Ors And Another Appeal [1993] 3 All ER 417 ***(refd)***

Petrie Christopher Harrisson v. Jones Alan And Others [2005] 2 SLR (R) 387 ***(refd)***

Rhone v. Stephens [1994] 2 AC 310 ***(refd)***

Thamesmead Town Ltd v. Allotey [1998] 3 EGLR 97 ***(refd)***

Tito v. Waddell (No 2) [1977] 3 All ER 129 ***(refd)***
Tolhurst v. Associated Portland Cement Manufacturers (1900) Ltd [1902] 2 KB 660 ***(refd)***
Wilkinson v. Kerdene Ltd [2013] EWCA Civ 44 ***(refd)***

Legislation referred to:
Companies Act 2016, s. 465(1)(h), (k)

For the plaintiffs - Foo Hong Chuen & Joycelyn Goh; M/s Izral Partnership
For the 1st, 2nd & 3rd defendants - Brenda Chan Qing Wen; M/s Meng Wai & Assocs
For the 4th defendant - Yeoh Cho Kheong, Prisilla Chong & Amber Kiew; M/s Ranjit Singh & Yeoh

Reported by Najib Tamby

JUDGMENT

Tee Geok Hock J:

Introduction

[1] Over the years, guarded and gated communities have become the preferred choice of residential properties by homebuyers who can afford to pay property prices at a premium over those comparable properties without guarded and gated features.

[2] The plaintiffs, co-owners of one unit of bungalow house, are among the numerous buyers who bought bungalow houses (270 units) at Kemuning Hills from the developer, Hicom-Gamuda Development Sdn Bhd, the fourth defendant herein ("the developer") on the basis and terms that the development project would be a guarded and gated community. In addition to the usual sale and purchase agreement, each of the original homebuyers signed a deed of mutual covenants of identical terms with the developer regarding the maintenance and management of common services and facilities including the provision of security guards.

[3] The present suit by the plaintiffs is against KKHills Management Sdn Bhd as the first defendant ("the management company"), the second and third defendants in their personal capacities and also their official capacities as the office bearers of the residents' association described as Residents' Association of Kota Kemuning Hills ("the RA") and the developer as the fourth defendant.

[4] In the originating summons here, the plaintiffs pray for numerous items of reliefs from (a) to (w) which can be conveniently grouped into the following broad categories:

(i) challenging the validity of the developer's first assignment of its roles and functions under the deed of mutual covenants to the RA;

(ii) challenging the validity of the RA's resolutions dated 19 March 2022 and second assignment of its roles and functions under the deed of mutual covenants to the management company;

A (iii) declaratory orders against the office bearers of the RA regarding trust, accounts and restitution;

(iv) appointment of receiver and manager to operate and manage the guarded and gated facilities on behalf of the residents and homeowners in the development project; and

B (v) other ancillary and/or consequential orders.

[5] On 12 October 2023, this court allowed parts of the prayers sought by the plaintiffs but dismissed other parts of the plaintiffs, prayers.

C **[6]** Dissatisfied, the plaintiffs have appealed against the said decision. The notice of appeal does not clearly and specifically state which parts of the said decision form the subject matter of appeal. The impression this court gets from the notice of appeal is that whatever part of the plaintiffs' prayers which was not allowed by this court appears to form the subject matter of this appeal.

D **Background And Main Facts Of The Case**

[7] In or around 2004, the developer/Gamuda developed a housing development called KK Hills, which comprises of 270 units of bungalows and semi-detached houses. ("KK Hills").

E **[8]** The developer entered into the sale and purchase agreements with the purchasers of KK Hills, including one dated 4 February 2004 ("SPA") with the plaintiffs, who currently remain the registered owners and residents of the land and property in KK Hills. (Enclosure 3 p. 43 para. 11 encl. 3 pp. 96 to 124).

F **[9]** Simultaneously with the SPA, a deed of mutual covenants ("DMC") was also entered into for the developer to be in charge of the control management administration of the common area and facilities to regulate the day-to-day use and enjoyment of the property, common area, management and administration of KK Hills until such services are taken over by the G authority (encl. 3 p. 43 para. 12). See the DMC at pdf pp. 125 to 163 of encl. 3.

[10] KK Hills was fully developed and the vacant possession of the property was delivered to the plaintiffs on or around 2005. The plaintiffs started moving into the property in or around 2008 (encl. 3 p. 44 para. 13). H The local authority, Majlis Bandaraya Shah Alam, through its letter dated 5 April 2005, approved the developer's development as a gated community: para. 4 of MBSA's letter dated 16 August 2021 to Ravindharan: encl. 5 p. 12.

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[11] When KK Hills was first completed, KK Hills was managed by the developer through its agents. The developer obtained permission from the local authorities for KK Hills to be a gated community on or around 2005. This was overtaken by a further conditional approval granted in the letter from Shah Alam City Council to the RA dated 26 January 2022 (encl. 3 pp. 44 to 45 paras. 15 to 16 encl. 5 pp. 12 to 14 encl. 5 pp. 31 to 36).

[12] During the period of the developer's management over KK Hills, a group of owners, including KC Lim, were actively scrutinising the developer's management of KK Hills (encl. 3 p. 45 para. 17).

[13] On 16 February 2011, Residents' Association of Kota Kemuning Hills ("the RA") was established and registered under the Societies Act 1966. The present office bearers of the RA include, amongst others: (a) Frank Teh, who is the current president of the RA, and shareholder and director of the management company; and (b) KC Lim, who is the current vice president of the RA and shareholder and director of the first defendant-company (encl. 3/p. 45/para. 18 encl. 3 pp. 83, 85, 95).

[14] After the RA was set up, the RA actively liaised with the developer on the management of KK Hills on behalf of the owners. The RA also conducted general meetings and other gatherings to address issues in KK Hills with homeowners. (encl. 3 p. 45 para. 19).

[15] Having acknowledged the existence of the RA as a homeowners' association, on or around 9 July 2014, the developer notified the intended handover of the management of KK Hills to the RA in the year 2015 ("intended handover"), which was objected by some landowners (including the plaintiffs) (encl. 4 p. 77).

[16] On or around 23 December 2014, the developer notified the owners in KK Hills that it shall hand over its duties, obligations and functions as set out under the DMC to the RA on 30 June 2015. However, this did not happen (encl. 4 p. 82). From July 2020 until December 2020, Gamuda and the RA gave notice of the assignment to the residents of KK Hills. The said notice was given by way of multiple announcements, notices, and a town hall gathering (see pdf pp. 50 to 68 of encl. 11).

[17] Gregory joined as a committee member of the RA for the term 2018/2019. At that time, Frank Teh was also the president of the RA. Gregory did not seek re-election after one term (encl. 3 p. 46 para. 23).

[18] On or around 29 June 2020, the developer once again informed the RA that the intended handover was intended to be completed by November 2020 (encl. 4 pp. 83 to 85). On 7 August 2020, the management company was incorporated under the Companies Act 2016.

[19] It seems that complaints were raised by some landowners (including Gregory) to the developer that the RA allegedly lacked transparency as they allegedly were excluded from some groups and/or their texts/messages were deleted and/or they were at one time banned from the group (encl. 4 pp. 88 to 104). Records showed that subsequently, Gregory was reinstated in the WhatsApp group and the reason given by an office bearer was that the deletion was an oversight or due to inadvertence.

[20] On 1 December 2020, the developer entered into a master assignment with the RA to assign its rights, duties and obligations under the DMC to the RA ("first impugned assignment") (encl. 4 pp. 159 to 163). See master assignment at pdf pp. 70 to 100 of encl. 11.

[21] Since the first impugned assignment, the RA managed KK Hills until the management company took over the management.

[22] By letter dated 26 January 2022, the local authority granted specific detailed approval for the guarded community at KK Hills (pp. 31 to 36 of encl. 5).

[23] Notice of 11th AGM of the RA was issued *via* emails to the members of the RA, and there was no specific item of agenda on a proposal for the assignment of RA's rights, benefits, functions and obligations in respect of management and administration of the guarded community to the management company or anybody else: see p. 52 of encl. 5.

[24] Shortly before the date of the AGM of the RA, the first plaintiff was temporarily suspended as a member by the RA pending an inquiry into alleged misconduct. As a result of such suspension, the first plaintiff was barred from attending the 11th AGM: see pp. 56 to 61 of encl. 5.

[25] During the annual general meeting on 19 March 2022 attended by 39 members, the RA, by majority of 36 votes, passed the following purported resolutions:

(i) to assign the roles and responsibilities under the DMC from the RA to the management company (Resolution No. 2 at pp. 66 to 67 of encl. 5); and

(ii) to transfer and release shares of the RA to five individuals including Frank Teh and KC Lim ("Resolution No. 3 of 11th AGM") (encl. 5 pp. 63 to 69).

[26] The RA, subsequently, on 8 April 2022 executed a second assignment document by which the RA purported to assign the rights, duties and obligations under the DMC to the management company ("second impugned assignment") (encl. 11 pp. 123 to 153).

[27] The management company then proceeds to manage KK Hills and collect maintenance charges and sinking fund based on the purported assignments. The management company also operated a gated and guarded community scheme in KK Hills (encl. 5 pp. 12 to 14).

[28] The RA, after an inquiry, found on 7 July 2022 that the first plaintiff's conduct was totally unbecoming and had fallen short of the standard expected of a member of the association but merely punished him with an admonition and reprimand. The first plaintiff's membership was lifted as from 7 July 2022: p. 94 of encl. 5.

[29] The plaintiffs refused to pay the maintenance charges and sinking fund since 1 December 2020 (encl. 5 pp. 26 to 28). The unpaid maintenance fees imposed upon the first plaintiff was RM9,126.47 as at 6 September 2022: pp. 97 to 98 of encl. 5.

[30] The management company brought a claim *vide* Shah Alam Magistrates' Court Civil Suit No. BA-A72NCvC-59-01-2023 ("suit 59") claiming maintenance charges and sinking fund against the plaintiffs in January 2023 (encl. 5 pp. 101 to 112).

[31] In this originating summons, the plaintiffs seek various declaratory reliefs and related or ancillary orders.

Main Issue To Be Decided

[32] On a broad basis, the main issues to be decided in the present case are:

(i) whether the assignment of the developer's maintenance and management functions, rights and obligations ("the master assignment") to the RA was valid and binding upon the residents including the plaintiffs;

(ii) whether the RA's assignment of the RA's maintenance and management functions, rights and obligations to the first defendant-company was valid and binding upon the residents including the plaintiffs;

(iii) whether the plaintiffs are entitled to the reliefs and remedies prayed for or part thereof.

First Main Issue: Whether The Assignment Of The Developer's Maintenance And Management Functions, Rights And Obligations ("The Master Assignment") To The RA Was Valid And Binding Upon The Residents Including The Plaintiffs

Conditional Benefit Principle

[33] In the present case, the plaintiffs argue that on the principle that only benefits and rights can be assigned but no burden or obligation can be assigned, the master assignment dated 1 December 2020 which stipulated for assignment of the entire rights, benefits, burdens and obligations of the

A developer/fourth defendant under the deed of mutual covenants ("DMC") to the residents' association is invalid, unenforceable and void *ab initio*.

[34] On the other hand, the defendants argue that the type and nature of the rights, benefits, burdens and obligations of the developer/fourth defendant under the DMC are capable of being validly assigned and that the DMC, by its terms, expressly provides for such assignment, and therefore the master assignment is valid and binding.

[35] Having read and considered the decided authorities cited by the parties, this court held that:

(i) as a general rule, a burden or obligation under an agreement cannot be validly assigned to a non-party; and

(ii) however, as an exception thereto, a particular type and nature of contractual burden or obligation can be validly assigned together with the rights and benefits under the same contract to a non-party who becomes the assignee.

The general rule has been decided in various cases including *Housing And Development Board v. Lee Sem Yoong Sdn Bhd* [1987] CLJU 30; [1987] 1 LNS 30; [1987] 2 MLJ 204 (Supreme Court); *Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd & Ors And Anor Appeal* [1993] 3 All ER 417 (House of Lords); *Tolhurst v. Associated Portland Cement Manufacturers (1900) Ltd* [1902] 2 KB 660 (Court of Appeal of England), while the exception has been judicially recognised in various cases including *Halsall v. Brizell* [1957] 1 All ER 371; *Tito v. Waddell (No 2*) [1977] 3 All ER 129 (Megarry VC at pp. 290, 291 and 320); *Davies v. Jone*s [2009] EWCA 12 Civ 1164 (English Court of Appeal); *Thamesmead Town Ltd v. Allotey* [1998] 3 EGLR 97 (English Court of Appeal); *Wilkinson v. Kerdene* [2013] EWCA Civ 44 (English Court of Appeal); *Elwood v. Goodman* [2014] Ch 442 (English Court of Appeal).

[36] Megarry J in *Tito v. Waddell (No 2)* described the exception as conditional benefit principle. The conditional benefit principle propounded by Megarry J in *Tito v. Waddell (No 2)* was also impliedly approved by the House of Lords in *Rhone v. Stephens* [1994] 2 AC 310.

[37] The conditional benefit principle was stated by Megarry VC in *Tito v. Waddell (No 2)* as follows:

> An instrument may be framed so that it confers only a conditional or qualified right, the condition or qualification being that certain restrictions shall be observed or certain burdens assumed, such as an obligation to make certain payments. Such restrictions or qualifications are an intrinsic part of the right: you take the right as it stands, and you cannot pick out the good and reject the bad. In such cases, it is not only the original (obligor) who is bound by the burden: his successors in title are unable to take the right without also assuming the burden. **The benefit and the burden have been annexed to each other *ab initio*, and so the benefit is only a conditional benefit.** (emphasis added)

[38] The English Court of Appeal in *Davies v. Jones* [2009] EWCA Civ 1164 ("*Davies*") analysed the aforesaid cases including a few other English Court of Appeal cases and held (at [27], p. 766) that the following propositions could be distilled from the cases analysed:

(i) the benefit and burden must be conferred in or by the same transaction;

(ii) the receipt or enjoyment of the benefit must be relevant to the imposition of the burden in the sense that the former must be conditional on or reciprocal to the latter; and

(iii) the person on whom the burden is alleged to have been imposed must have or have had the opportunity of rejecting or disclaiming the benefit, not merely the right to receive the benefit. ("the *Davies* tripartite formulation").

[39] This court agrees that the exception, also described as conditional benefit principle, has also been recognised in Malaysia: see *Housing And Development Board v. Lee Sem Yoong Sdn Bhd* [1987] CLJU 30; [1987] 1 LNS 30; [1987] 2 MLJ 204 (Supreme Court); *Chung Khiaw Bank Ltd v. Penang Garden Sdn Bhd* [1990] 2 CLJ 621; [1990] 1 CLJ (Rep) 748 at 751 A-B; [1990] 1 MLRH 495 (Mohamed Dzaiddin J (later CJ)); *Affin-ACF Finance Bhd v. Meriplex Sdn Bhd & Ors* [2011] 8 CLJ 455; [2010] 3 MLRH 668; [2010] MLJU 969 (Nallini J (now FCJ)). In *Housing And Development Board v. Lee Sem Yoong Sdn Bhd* (*supra*), the Supreme Court expressly approved and applied the conditional benefit principle in the following passage of the judgment:

> We are of the view that the assignment in this case falls under the classification of **conditional benefits** as expounded by Megarry V.C. in *Tito v. Waddell (No 2)* [1977] 1 Ch 106, 290, *viz.* where the benefit and the burden in an instrument has been annexed to each other *ab initio* such that the conditions or restrictions became an intrinsic part of the right, it is not only the original grantee who is bound by the burden but his successors in title must take the right as well as assuming the burden.
>
> (emphasis added)

[40] Assignability of matters under the law of assignment is a common law principle which was also extended to include equitable assignment. Common law principles have been developed in tandem with the progress of society. In light of changes and new developments in our life and society, either new common law principles are enunciated or the pre-existing common law principles evolve to fit in with the needs and common well-being of the society at the relevant time.

[41] In line with the changes and developments in our life, economy and society, this court held that the conditional benefit principle should be applied in Malaysia.

[42] Although the fourth defendant's counsel, being the counsel who strongly advocates the application of the conditional benefit principle in Malaysia through his arguments here, has also submitted that only requirements (i) and (iii) in *Davies* tripartite formulation are really necessary for the application of the conditional benefit principle in a particular case, this court prefers the English Court of Appeal's *Davies* tripartite formulation in its entirety.

[43] The reasons for this preference include:

(i) the English Court of Appeal has carried out an analytical consideration of the relevant past decisions before coming to this conclusion;

(ii) conditional benefit principle as an exception to the general rule against assignment of burden should not be formulated too widely so much so that the general rule would be erased or obliterated;

(iii) with the increase in trades and commercial transactions and the increasing complexities of the contractual transactions, it has become not uncommon to have parties in a contract stipulating for different and separate matters between them, and the removal of requirement (ii) from the *Davies* tripartite formulation would or is likely to result in assignability of all or most types of burdens in a contract, thereby creating an anomaly of making the exception much wider than the general rule; and

(iv) the conditional benefit principle with requirement (ii) is more consistent with the co-existence with the well-settled doctrine of severability in contract terms.

[44] In our present case, the transaction between the developer and the plaintiffs was the sale and purchase of a residential house to be built by the developer together with facilities, services and common areas, including security guards.

[45] The SPA and the DMC were signed together on the same day when the developer and the plaintiffs entered into the sale and purchase transaction.

[46] Under the DMC, the burden of providing security guards was to be handled and managed by the developer, and the benefit of having security guards and, therefore, enhanced security in the development is the intended direct benefit to be enjoyed by the purchasers as residents in the development.

[47] The indirect monetary benefit of a probably better market value of the residential house in a guarded community is also to be enjoyed by all the purchasers of residential units in a guarded and gated community.

[48] It is settled law that there can be more than one document in respect of a transaction. A

[49] In the premises, the same requirement (i) has been fulfilled, *ie*, the benefit and burden must be conferred in or by the same transaction.

[50] The requirement (ii) is that the receipt or enjoyment of the benefit must be relevant to the imposition of the burden in the sense that the former must be conditional on or reciprocal to the latter. B

[51] A party's benefit is usually also another party's burden. As far as the developer is concerned, the burden is in respect of the provision of security guards and having to handle and manage the employment of security guards, their housing needs and remunerations, while the seeming benefit to the developer is the rights to collect service charges from the purchasers (but it is not a real benefit because it is a non-profit activity). C

[52] As far as the property purchasers and/or residents are concerned, the benefits of having security guards to guard the development are better security and the likelihood of better market values for their residential properties in a guarded community, while their burden is the payment of service charges towards the costs of security guards. D

[53] The property purchasers' benefits, derived from the provision of security guards, are relevant to the imposition of the developer's burden in the sense that the former are conditional on or reciprocal to the latter developer's burden. If the developer removes the provision of security guards, the property purchasers would not enjoy any benefit of better security or the likelihood of better market value of properties in a guarded community. If the purchasers remove their burden of having to contribute service charges, their benefits of better security and the likelihood of enhanced market value of properties in a guarded community would also vanish. E F

[54] In the circumstances, this court has held that requirement (ii) of *Davies* tripartite formulation is fulfilled here. G

[55] As regards requirement (iii) that the person on whom the burden is alleged to have been imposed must have or have had the opportunity of rejecting or disclaiming the benefit, not merely the right to receive the benefit, it is noted that when the properties in this development project were sold by the developer to the purchasers including the plaintiffs and with the signing of the DMC simultaneously with the SPA, each purchaser knew at the time of signing SPA and DMC that the development was to be a guarded community and they signed the agreements with intention and/or reciprocal commitments that they would contribute towards the costs of security guards. H I

[56] If a buyer did not want the financial burden of contributing towards the costs of security guards in a guarded community, he/she should not have bought any unit of property from the developer with such guarded community features and terms. A potential purchaser had, at the time before the signing of the SPA and DMC, the full opportunity to reject or disclaim the benefit of better security in a planned development with guard community by him/her refusing to buy the property and also refusing to sign the SPA and DMC. If he/she did not sign the SPA and DMC to buy any property in a planned development with a guarded community, then he/she would have no burden of having to contribute towards the costs of security guards.

[57] In the circumstances here, requirement (iii) is also fulfilled.

[58] In the express terms of the DMC, the purchasers, including the plaintiffs, specifically agreed that the developer's handling and management of the security service will not be forever, and that the developer has been given express contractual rights, after the completion of the construction and development of the project, to assign its roles and functions under the DMC to the Residents' Association or corporation.

[59] Here, by way of the master assignment dated 1 December 2020, the developer assigned its roles and functions to the Residents' Association comprising of members who are purchasers of the property units in this project.

[60] In the premises, this court held that the master assignment from the developer to the RA is valid and binding upon all the purchasers in the development project.

[61] Independently of the conditional benefit principle, even decided cases which did not mention the conditional benefit principle have held that the payment obligation binds the transferee where there is a clear and obvious link between the rights enjoyed by the transferee and the obligation to contribute to the costs of providing the service or facility from which the right of enjoyment is derived (see *Elwood v. Goodman* [2014] Ch 442), or where an instrument may be framed so that it confers a right that is conditional on certain restrictions being observed or certain burdens assumed (see *Chung Khiaw Bank Ltd v. Penang Garden Sdn Bhd* [1990] 2 CLJ 621; [1990] 1 CLJ (Rep) 748 at 751 A-B and *Affin-ACF Finance Bhd v. Meriplex Sdn Bhd & Ors* [2011] 8 CLJ 455; [2010] MLJU 969, or where the payment obligation is related to the rights or benefit which the person has continued to exercise or enjoy (see *Wilkinson v. Kerdene* [2013] EWCA Civ 44).

[62] Here, after having bought the property unit in a development with a guarded community feature, the plaintiffs have continued to enjoy the benefit of better security and the likelihood of enhanced market value of owning a property unit in a guarded community.

[63] The benefits of better security and the likelihood of enhanced market value of owning a property unit in a guarded community continue to be enjoyed by the plaintiffs so long as they are owners of the property unit.

[64] The present case is unlike those where an assignment instrument seeks to impose a non-payment type of physical obligation upon the subsequent buyer, such as the obligation to repair his own roof which was adjacent to a neighbour's roof (*Rhone v. Stephens*), *etc*. In cases where the effect of assignment merely imposes a payment obligation upon the contractee arising from works or services to be carried out by another person which benefits the contractee and such service or work is what the contractee's original contract expressly stipulated, there is no valid legal reason for the contractee to refuse to make payment for such service or work.

[65] In summing up, the assignment of the developer's maintenance and management functions, rights and obligations through the master assignment to the RA was valid and binding upon the residents including the plaintiffs.

Second Main Issue: Whether The RA's Assignment Of The RA's Maintenance And Management Functions, Rights And Obligations To The First Defendant – Company Was Valid And Binding Upon The Residents Including The Plaintiffs

[66] Arising from the plaintiffs' arguments in respect of the second main issue, the outcome of the second main issue depends on the following sub-issues:

(i) whether the establishment of KKHills Management Sdn Bhd is illegal and *ultra vires* the Constitution of the Residents' Association of Kota Kemuning Hills;

(ii) whether KKHills Management Sdn Bhd is a competent legal entity to receive the assignment of the roles and functions from the RA under the DMCs; and

(iii) whether all the resolutions or part thereof passed in the annual general meeting of Residents' Association of Kota Kemuning Hills held on 19 March 2022 are null and void and of no effect.

Sub-issue (i): Whether KKHills Management Sdn Bhd Is Illegal And Ultra Vires The Constitution Of The RA

[67] Sub-issue (i), formulated from the relief (a) prayed for by the plaintiffs, involves a mismatch of two features. The legality of a limited company such as KKHills Management Sdn Bhd is not dependent on whether or not its objectives, business or articles of association are consistent with the terms of the Constitution of the Residents' Association of Kota Kemuning Hills – a different legal entity.

[68] Although members of a society are bound by the rules and constitution of the society in their capacity as members, the members of a society have the freedom of other associations and are free to form a limited company of their own choice. Such limited company incorporated by some members of a society is a legal and lawful company as long as it is incorporated in accordance with the Companies Act and has lawful objectives.

[69] In the premises, it is a mismatch and out of place to consider or decide whether the establishment of KKHills Management Sdn Bhd is illegal and *ultra vires* the Constitution of the Residents' Association of Kota Kemuning Hills.

Sub-issue (ii): Whether Or Not The Management Company Can Lawfully Take Over The Roles And Functions Of The RA Under The DMC

[70] However, it is a different question whether or not such limited company can lawfully take over the roles and functions of the society. That brings us to sub-issue (ii).

[71] Clauses of the DMC which are relevant to this question of whether or not such limited company can lawfully take over the roles and functions of the society are reproduced below:

> **4.10 Homeowners association**
>
> The Purchaser further agrees and covenants with the Vendor that the Vendor may, at any time hereafter and if required by the Vendor as the Vendor in its absolute discretion may deem fit *establish or cause to be establish a homeowners association or corporation to take over all or any part of the duties obligations and functions of the Vendor as set out in this Deed.* For the avoidance of doubt, the Vendor shall not be obliged to recognise any homeowners association formed by the Purchaser and/or the other owners without the Vendor's prior written consent.
>
> **6.5 Assignment of the Common Area and/or the Facilities**
>
> The Vendor shall have the absolute right and liberty at any time to completely assign all or any part of its obligation under this Clause to maintain the Common Area and/or the Facilities to any other party person or corporation as the Vendor may in its absolute discretion deems fit and upon such assignment as aforesaid the Purchaser shall thereafter deal with the assignee in respect of all matters pertaining to the same and shall pay all charges referred to in Clause 7 directly to the assignee. *Notwithstanding the generality of the foregoing the Vendor reserves its rights at any time to surrender all or any part of its duties and obligation to the Purchaser and to the other owners collectively to the homeowners association* as set out in Clause 4.11 and/or to the Authority in such manner as the Vendor deems fit and shall not in any way be liable to the Purchaser in such event.

8.1 Provision for the Services

Subject to Clause 8.2 and Clause 8.3 of this Deed hereof, the Vendor shall provide only the Services and security services *until the same are taken over by the homewoners' association (if any) and/or the Authority (whichever is applicable)* Provided Always that if the said Property shall remain vacant without any construction works carried out thereon by the Purchaser, the Vendor shall be entitled but shall not be obliged to cut the grass periodically subject to payments being made by the Purchaser to the Vendor as provided in Clause 7.2 hereof.

8.3 Assignment of the Services and maintenance of obligation

The Vendor shall have the absolute right and liberty at any time to completely assign all or any part of its obligation under this Clause to maintain the said Property and provide the Services *to any other party person or corporation as the Vendor may in its absolute discretion deems fit* and upon such assignment as aforesaid the Purchaser shall thereafter deal with the assignee in respect of all matters pertaining to the Service and shall pay the Service Charge referred to in Clause 9 directly to the assignee. Notwithstanding the generality of the foregoing the Vendor reserves its right at any time to surrender all or any part of its duties and obligations to the Purchaser and to the other owns collectively to the homeowners association as set out in Clause 4.11 and/or to the Authority in such manner as the Vendor deems fit and shall not in any way be liable to the Purchaser in such event. (emphasis added)

[72] Interpreted in the context of the DMC and harmoniously and also in light of the indisputable background foundation of the SPAs between the developer and the various purchasers, the relevant clauses of the DMC envisage that the assignment and taking over of the roles and functions of management and administration of facilities and services including security guards shall be to the residents association or a corporation collectively owned, controlled and managed by members comprising of all the purchasers in the guarded community project.

[73] In our present case, KKHills Management Sdn Bhd is a limited company with four shareholders and four directors who are part of the purchasers in the project.

[74] Except for these four persons, all the other purchasers in the KK Hills project and other members of the Residents' Association are not shareholders or directors of KKHills Management Sdn Bhd.

[75] Therefore, KKHills Management Sdn Bhd is not a legal entity which was intended or contemplated by the developer and the purchasers, who are signatories to the SPAs and DMCs, as a legal entity who is competent and eligible to take over the roles and functions of the developer under the DMC.

[76] In the circumstances, the purported assignment in the second assignment, said to be signed between the RA and KKHills Management Sdn Bhd, is a transaction which is not permitted by the DMC.

[77] In the premises, this court has held that KKHills Management Sdn Bhd, with its shareholding structure and directorship as at the material times, cannot lawfully take over the roles and functions of the Residents' Association.

[78] To qualify as a competent limited company to take over the roles and functions of the RA under the DMC in accordance with the intent and purposes of the DMC, a limited company must have:

(i) as its shareholders/members, all the property owners in the project who are able and willing to be its shareholders/members (and not merely some of such property owners); and

(ii) a memorandum and articles of association which are in substance similar to the rules of the RA.

[79] In summing up on sub-issue (ii), this court holds that at the material time of the second assignment, KKHills Management Sdn Bhd was not a competent or eligible legal entity to receive the assignment of the roles and functions from the RA under the DMCs. As such, the purported assignment under the second assignment is invalid and void.

Sub-issue (iii): Validity Or Otherwise Of The RA Resolutions Passed On 19 February 2022 AGM

[80] We now come to the resolutions passed at the RA's 11th AGM on 19 March 2022.

[81] Although the general principle is that the members are contractually bound to accept the majority decision of the member decided by the AGM, a court may interfere with such internal affairs of the club in the event the club had acted *ultra vires* the rules of the club: see *Lee Tak Suan v. Tunku Dato' Seri Shahabudin Tunku Besar Burhanuddin & Ors* [2012] CLJU 598; [2012] 1 LNS 598; [2013] 7 MLJ 157 (High Court).

[82] In *Petrie Christopher Harrisson v. Jones Alan And Others* [2005] 2 SLR (R) 387, the Singapore High Court held that although the majority of members present at a meeting had an absolute right to regulate the procedure and/or conduct of that meeting, this was limited to purely procedural issues. An entitlement to vote, in contrast to the modality of voting, was a substantive contractual right on the basis of which a legitimate expectation to participate in the entirety of the voting exercise would have accrued to each member attending the meeting.

[83] This court does not accept the plaintiffs' argument that erroneously or wrongfully denying one member of the society from attending an AGM could invalidate the resolutions passed by the majority of multiple members who attended the AGM, bearing in mind that 36 members voted in favour

while only two voted against the proposed resolutions. From the quantity of the majority votes at the 11th AGM of the RA, the first plaintiff's one vote would not make any real or practical difference to the outcome of the passing of resolutions.

[84] In the plaintiffs' counsel's submissions, the plaintiffs have also argued that the RA's resolutions on assignment to KKHills Management Sdn Bhd were not stipulated in the agenda circulated for the 11th AGM of the RA and were therefore invalidly or improperly passed at the said AGM.

[85] This court holds that the purpose of agenda for a society's AGM is to inform in advance the members the specific matters proposed to be passed at the AGM so that the members are duly informed and can decide whether or not they want to attend the particular AGM to discuss and vote for or against the proposed matters.

[86] It is the ordinary habit of human beings that if the proposed agenda are on the routine matter or the usual management or administrative matters, many members are unlikely to bother to attend the AGM. However, if the proposed matters in the agenda contain a special or extraordinary matter or a matter which is of great importance to the society or to the members, comparatively many more members who know of such proposed agenda would attend the AGM to participate in the discussions and voting at the AGM.

[87] For the RA society here, there were 270 members but only 39 members attended the 11th AGM based on the agenda sent out.

[88] In order to fulfil the basic requirement and achieve the main objective of giving advance notice of agenda to the members of the society before the date of the proposed AGM, the agenda must specifically state the major or important matters which are proposed to be discussed, considered and resolved at the AGM so that the members of the society have the reasonable opportunity to know the specific major or important matters to be discussed and considered at the AGM and decide whether or not they want to set aside time for attendance at the AGM to state their views and cast their votes for or against the proposed major or important matters.

[89] The office bearers of a society cannot, under the guise or subtle cover of "any other matter arising", raise a specific major or important matter which is not expressly stated in the specific items of the agenda. "Any other matter arising" in the agenda for a society's AGM refers to incidental, consequential or detailing matters in respect to another specific matter expressly stated in the same agenda, but it cannot include a fresh matter which is major or of much importance to the society as a whole.

[90] In deciding whether or not a particular matter falls within the ambit of the items stated in a notice of general meeting, the court considers it objectively from the viewpoint of a reasonable reader in the factual context of the case.

[91] In the factual context of our present case, after the developer's completion of the project and subsequent to the expiry of the defect liability period, the RA's roles and functions in the control and management of security guards in the project is the sole or principal purpose of forming and continuing with the RA as a society.

[92] In the agenda sent to the members of the society, there was no mention whatsoever of any proposal to assign or pass to another company or entity the society's roles and functions in the control and management of security guards in the project, which was practically the only business of the society or at least the principal business of the society.

[93] The assignment resolutions purportedly passed at the 11th AGM would in effect assign and pass to another company (*ie*, KKHills Management Sdn Bhd) the only or principal business of the society.

[94] With due respect to the office bearers of the society and whoever were advising them at the material times, the assignment resolution purportedly passed at the 11th AGM were passed in contravention of the principles of meetings of societies and the constitution of the RA.

[95] In the premises, this court held that the items of resolutions passed in the annual general meeting of Residents' Association of Kota Kemuning Hills held on 19 March 2022 are, insofar as they purported to assign or pass the RA's roles and functions under the DMC to KKHills Management Sdn Bhd, null and void and of no effect.

Third Main Issue: Whether The Plaintiffs Are Entitled To The Reliefs And Remedies Prayed For Or Part Thereof

[96] In this originating summons ("OS"), the plaintiffs seek the following reliefs:

(i) a declaration that the establishment of KKHills Management Sdn Bhd is illegal and *ultra vires* the Constitution of the Residents' Association of Kota Kemuning Hills;

(ii) a declaration that all the resolutions passed in the annual general meeting of Residents' Association of Kota Kemuning Hills held on 19 March 2022 (or such other resolutions as this court deems fit) are null and void and of no effect;

(iii) a declaration that the master assignment agreement dated 1 December 2020 is invalid, unenforceable and void *ab initio*;

(iv) a declaration that KKHills Management Sdn Bhd holds all and any of its assets (including those held by any entity or party) on trust for the Residents' Association of Kota Kemuning Hills and/or landowners in Kota Kemuning Hills, including the plaintiffs;

(v) KKHills Management Sdn Bhd to account for all assets and proceeds as trustee to Residents' Association of Kota Kemuning Hills and/or landowners in Kota Kemuning Hills, including the plaintiffs in each of the breaches of fiduciary duty and/or breach of trust;

(vi) a declaration that the Residents' Association of Kota Kemuning Hills and/or landowners in Kota Kemuning Hills, including the plaintiffs are entitled to inquiry on such an account against KKHills Management Sdn Bhd (and/or its shareholders and directors);

(vii) a declaration that the Residents' Association of Kota Kemuning Hills and/or its office bearers hold all and/or any of its assets (including those held by any entities or parties) on trust for the landowners in Kota Kemuning Hills, including the plaintiffs;

(viii) Residents' Association of Kota Kemuning Hills and/or its office bearers to account for all assets and proceeds as trustee to the landowners in Kota Kemuning Hills, including the plaintiffs in each of the breaches of fiduciary duty and/or breach of trust;

(ix) a declaration that the landowners in Kota Kemuning Hills, including the plaintiffs are entitled to inquiry on such an account against the Residents' Association of Kota Kemuning Hills (and/or its office bearers);

(x) a receiver and manager or such other person as this court deems fit be appointed for KKHills Management Sdn Bhd, including but not limited to:

(a) take possession and control of the property of KKHills Management Sdn Bhd with a view to its winding up as a going concern;

(b) convert the property of KKHills Management Sdn Bhd into money;

(c) inspect at any reasonable time books or documents that relate to the property in receivership and that are in possession or under the control of KKHills Management Sdn Bhd;

(d) investigate and report the affairs of KKHills Management Sdn Bhd to the Residents' Association of Kota Kemuning Hills as to how much monies have been received and whether they were utilised in good faith;

(e) distribute all the assets of KKHills Management Sdn Bhd in accordance with the above trust;

(f) engage or discharge employees on behalf of KKHills Management Sdn Bhd;

A (g) such other things necessary or convenient to be done for or in connection with, or as incidental to the receivership;

(xi) remuneration of the receiver and manager or such other person as this court deems fit to be borne by such person(s), in such proportion and to such extent as may be determined by this court;

B (xii) after the receivership and distribution of assets by the receiver and manager or such other person as this court deems fit, KKHills Management Sdn Bhd be wound up by the court under s. 465(1)(h) and (k) of the Companies Act 2016;

C (xiii) a court-regulated meeting for the Residents' Association of Kota Kemuning Hills (which shall be deemed to be a meeting called according to the cl. 7 of the Constitution of the Residents' Association of Kota Kemuning Hills and those residents who present and entitled to vote) to be held within one month of the order made herein;

D (xiv) the court-regulated meeting shall discuss and determine the following matters at the meeting:

(a) general qualifications/membership of Residents' Association of Kota Kemuning Hills;

E (b) functions, rights, duties and powers of management of Kota Kemuning Hills under 270 deeds of mutual covenants from Residents' Association of Kota Kemuning Hills;

(c) disposal of the shares of the Residents' Association of Kota Kemuning Hills in KKHills Management Sdn Bhd;

F (d) cancellation of such clauses which *ultra vires* the Constitution Residents' Association of Kota Kemuning Hills dated 1 June 2010;

(e) novation of duties, obligations, functions, rights, title, interests, G proceeds, and benefits as set out in the deed of mutual covenant dated 4 February 2004 from Hicom-Gamuda Development Sdn Bhd to the Residents' Association of Kota Kemuning Hills;

(xv) this Honourable Court to order on the calling, convening and conduct of such meeting including the appointment of the chairperson;

H (xvi) restitution in a sum (which is to be assessed by the receiver and manager or such other person as this court deems fit appointed by this order) or such other current and non-current assets to be made by the KKHills Management Sdn Bhd and/or the Residents' Association of Kota Kemuning Hills to Hicom-Gamuda Development Sdn Bhd or I such other persons as this court deems fit;

(xvii) in the alternative, compensation to be awarded to the plaintiffs; A

(xviii) an order to compel Hicom-Gamuda Development Sdn Bhd to surrender the maintenance of the common area to the local authority or such other person as this court deems fit;

(xix) a declaration that the maintenance fees and sinking funds are to be paid by the landowners in Kota Kemuning Hills to the newly-appointed party and/or committee; B

(xx) loss and damages to be assessed;

(xxi) costs of this application be provided for including but not limited to parties who are liable to pay the costs, which may comprise of the current and past members of the RA, directors and shareholders of KKHills Management Sdn Bhd, and such other persons who are responsible, in such proportion and to what extent; C

(xxii) Shah Alam Magistrates' Court Civil Suit No. BA-A72NCvC-59-01-2023 be transferred to this Honourable Court to be dealt with in such manner and subject to further directions as may be given by this Honourable Court; and D

(xxiii) such further order or reliefs as this Honourable Court deems fit and proper, including but not limited to that the plaintiffs are at liberty to apply. E

[97] As a consequence of this court's decision on the first main issue, prayer (c) of the OS regarding the master assignment is dismissed with costs. The plaintiffs shall pay the costs of RM12,000 to the fourth defendant/Gamuda, subject to the allocatur. F

[98] As a consequence of this court's decision on the second main issue, prayer (a) of the OS is dismissed with costs.

[99] As a consequence of this court's decision on the second main issue:

(i) prayer (b) (challenge against the RA's resolutions) of the OS is partly allowed, and it is hereby declared that resolutions Nos. 2 and No. 3 passed in the annual general meeting of the Residents' Association of Kota Kemuning Hills held on 19 March 2022 are, insofar as they relate to purported assignment of the RA's roles and functions and transfer of shares to KKHills Management Sdn Bhd, are null and void and of no effect; G H

(ii) the second assignment dated 8 April 2022, which purported to assign the RA's roles and functions under the DMC to KKHills Management Sdn Bhd, is hereby declared to be null and void and of no effect; I

(iii) a declaration that KKHills Management Sdn Bhd holds all and any of its assets on trust for the Residents' Association of Kota Kemuning Hills (prayer (d) of the OS is allowed as aforesaid);

(iv) KKHills Management Sdn Bhd is to account for all assets and proceeds as trustee to Residents' Association of Kota Kemuning Hills by preparing a statement of account of assets and proceeds and providing the same to the Residents' Association of Kota Kemuning Hills within one month from the date of this order (prayer (e), (f) and (h) is partly allowed on modified terms as aforesaid); and

(v) a declaration that the members of the Residents' Association of Kota Kemuning Hills are, subject to payment of administrative charges and subject to their fulfilment of payment obligations in accordance with the rules of the RA, entitled to receive a copy of each the statement of account under item (iv) above from the Residents' Association of Kota Kemuning Hills.

[100] All the other reliefs prayed for by the plaintiffs are dismissed. This court does not find any valid or sufficient basis and reasons for granting the plaintiffs' other prayers in the OS because:

(i) the guarded community scheme at KK Hills has been approved by the local authority and is a legally recognised community scheme recognised by law;

(ii) the affairs of the RA as a society should be handled and managed by the society itself and it is up to the society, acting in accordance with the laws and its rules, to decide what is in the best interest of its members as a whole. As long as the society acts and decides in accordance with the laws and its rules, the minority in the society has to abide by the majority's decisions. The court's limited intervention would only be considered where the society acts against the laws or its rules and only to the extent necessary to stop or prevent contravention of the law or society's rules;

(iii) as far as the court is concerned, it is not in the overall interest of a non-profit society in charge of a guarded community to appoint receivers and managers, as such appointment entails substantial amounts of fees and expenses over and above the society's normal expenses. If a society on its own, by its properly-resolved decision, wants to engage external professionals to manage parts of its roles and functions in the guarded community, or a member thereof by his/her generosity wants to sponsor the costs of appointing external professional to help in managing parts of the society's roles and functions, it is up to them to make such commercial decision. The court will not order the appointment of receivers and managers for a non-profit society in

charge of a guarded community which would have the effect of exerting a heavy financial burden upon a non-profit society in charge of a guarded community with a meagre source of limited revenue;

(iv) as a general rule, the court does not grant an order which requires the court's close or intensive supervision in the implementation or enforcement of such court order and which would have the effect of the court taking over the conduct of the society or company's meetings and affairs. Even specific performance of a contract which requires the court's intensive or substantial supervision and administration would not be granted. As such, this court dismisses the plaintiffs' prayers which seek the court's close monitoring and/or significant supervision of the proceedings in the RA's meetings and affairs;

(v) the RA as a society is left to convene and conduct its own meetings in accordance with the law and its rules, and it is not for the court officials to attend and supervise the conduct of such meetings. If any member of the society wants to keep an audio-visual record of the proceedings at the annual meetings of the society, he/she may do so unless such recording is expressly prohibited by the rules of the society;

(vi) as it is the intent and objective of the purchasers who executed the DMCs together with SPAs at the beginning of the project that the project when completed would be managed and administered as a guarded community, it is unjust and inequitable for a minority group of members to come to the court to seek to demolish and/or destroy the basic feature of the guarded community which they all expressly and specifically covenanted in common through the DMCs. Much less could the purchasers of one unit of property purports to seek to demolish and/or destroy the basic feature of the guarded community which they all expressly and specifically covenanted in common through the DMCs;

(vii) if any person does not want to live in a guarded community with the ancillary payment obligation, he/she should not buy any property unit in a project sold with the guarded community feature. A property purchaser cannot sign the contract for a guarded community with hundreds of other purchasers and then subsequently come to the court to try to destroy and/or demolish the fundamental feature of the guarded community he signed for. If a buyer changes his/her mind regarding living in a guarded community, after having signed the SPA and DMC with guarded community features together with many other buyers in the same guarded community project, such buyer can sell off his property unit in the guarded community and move to another residential project without guarded community features. It is unjust

and inequitable, at the instance of a buyer or a minority of buyers, to destroy or demolish the guarded community features which many other buyers have contracted, paid for and intended to enjoy the benefits therefrom;

(viii) no damages are awarded to the plaintiffs here because the plaintiffs appear to have been in default in paying their portions of contributions towards the maintenance and management of the guarded community. Although the plaintiffs, as members of the society, have the *locus standi* to file and pursue this action for several of the reliefs prayed for, the plaintiffs' default in paying contribution towards costs of maintaining and managing the guarded community are inconsistent with the intent and objective of the DMC which was signed together with the SPA.

[101] As this court has disagreed with quite a number of the plaintiffs' arguments and the majority of the plaintiffs' numerous prayers have been dismissed here, the plaintiffs should not be awarded costs of this suit.

Conclusion

[102] In conclusion, this court on 12 October 2023 made the following orders:

(i) item (a) dalam saman pemula (lampiran 1) ditolak;

(ii) item (c) dalam saman pemula (lampiran 1) ditolak dengan kos;

(iii) sebahagian item (b) dalam saman pemula dibenarkan, dan deklarasi diberikan bahawa resolusi-resolusi No. 2 dan No. 3 yang diluluskan dalam mesyuarat agung tahunan Persatuan Penduduk Kota Kemuning Hills yang diadakan pada 19 Mac 2022 adalah terbatal dan tidak sah dan tidak berkuat kuasa sejauhnya ianya konon menyerah-hak peranan-peranan dan fungsi-fungsi dan syer-syer persatuan tersebut kepada KKHills Management Sdn Bhd;

(iv) deklarasi bahawa suratan serah-hak bertarikh 8 April 2022 yang kononya menyerah-hak peranan-peranan dan fungsi-fungsi dan syer-syer Persatuan Penduduk Kota Kemuning Hills kepada KKHills Management Sdn Bhd adalah tidak sah dan tidak berkuat kuasa;

(v) deklarasi bahawa KKHills Management Sdn Bhd memegang semua harta atas amanah bagi kepentingan Persatuan Penduduk Kota Kemuning Hills;

(vi) KKHills Management Sdn Bhd hendaklah kemukakan akaun mengenai semua aset-aset dan hasil sebagai pemegang amanah kepada Persatuan Penduduk Kota Kemuning Hills dengan menyediakan satu penyata akaun bagi aset dan hasil dan membekalkannya kepada Persatuan Penduduk Kota Kemuning Hills dalam tempoh satu bulan dari tarikh perintah ini;

(vii) deklarasi bahawa kesemua ahli-ahli Persatuan Penduduk Kota Kemuning Hills, tertakluk kepada pembayaran caj pentadbiran dan penunaian obligasi pembayaran menurut kaedah-kaedah persatuan, masing-masing berhak menerima sesalinan penyata akaun yang dinyatakan dalam item (vi) daripada Persatuan Penduduk Kota Kemuning Hills;

(viii) lain-lain item dalam saman pemula (lampiran 1) ditolak;

(ix) plaintif-plaintif hendaklah membayar kos guaman sejumlah RM12,000 kepada defendan keempat, tertakluk kepada alokatur; dan

(x) tiada perintah kos guaman antara plaintif-plaintif dan defendan-defendan pertama, kedua dan ketiga.